

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7942

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BERNARD DONNELL SHERRILL, a/k/a Nard,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Terrence W. Boyle, Chief District Judge. (CR-95-5; CA-98-444-3)

Submitted: July 30, 2004

Decided: August 23, 2004

Before MOTZ and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Bernard Donnell Sherrill, Appellant Pro Se. Gretchen C. F. Shappert, United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Bernard Donnell Sherrill appeals the district court's order denying relief on his 28 U.S.C. § 2255 (2000) motion and denying his motion to amend the § 2255 motion, and a subsequent order denying his motion for reconsideration.* An appeal may not be taken from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee,

*We initially remanded this case to the district court for a determination as to whether Sherrill could show good cause or excusable neglect with respect to his untimely notice of appeal. See United States v. Sherrill, 2002 WL 704673 (4th Cir. Apr. 24, 2002) (unpublished). The district court found that Sherrill had shown excusable neglect to justify the late filing. We remanded to the district court a second time for a determination as to whether Sherrill filed his motion for reconsideration within ten days of the entry of judgment. See United States v. Sherrill, 2003 WL 21983723 (4th Cir. Aug. 21, 2003) (unpublished). The district court has concluded that Sherrill submitted his motion for reconsideration within ten days of the entry of judgment. Because we do not find this factual determination clearly erroneous, United States v. Gypsum, 333 U.S. 364, 395 (1948), we conclude that we have jurisdiction over Sherrill's appeal of both the underlying denial of Sherrill's § 2255 motion and the denial of his motion for reconsideration.

252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Sherrill has not made the requisite showing.

Accordingly, while we grant Sherrill's motion for permission to file an oversized informal brief, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED